

**PT 98-86**

**Tax: PROPERTY TAX**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>GRAND RIDGE</b>	)	<b>Docket #s</b>	<b>96-50-60</b>
<b>VOLUNTEER FIRE DEPARTMENT</b>	)		<b>96-50-61</b>
<b>Applicant</b>	)		<b>96-50-62</b>
	)		
<b>v.</b>	)	<b>Parcel Index #</b>	<b>27-24-100-022</b>
	)		<b>27-24-100-021</b>
	)		<b>27-24-100-023</b>
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: James E. Hinterlong, Attorney at Law, for the Grand Ridge Volunteer Fire Department.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 W. Jefferson, Springfield, Illinois, on February 6, 1998, to determine whether or not LaSalle County Parcel Index Nos. 27-24-100-022, 27-24-100-021, and 27-24-100-023 qualified for exemption during the 1996 assessment year.

Gary Schobert, Vice President; Eugene A. Lewis, Secretary/Treasurer and rental agent; and Steven A. Lehr, Building Director of the Grand Ridge Volunteer Fire Department (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels

during the 1996 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for charitable purposes during the 1996 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during the entire 1996 assessment year. It is also determined that the applicant is not a charitable organization. Finally, it is determined that the applicant did not use the parcels in question for charitable purposes during the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that LaSalle County Parcel Index Nos. 27-24-100-022, 27-24-100-021, and 27-24-100-023 did not qualify for a property tax exemption for the 1996 assessment year was established by the admission into evidence of Department's Ex. Nos. 1 through 7. (Tr. p. 18)

2. On May 19, 1997, the Department received a property tax exemption application from the LaSalle County Board of Review for Permanent Parcel Index No. 27-24-100-022. The applicant had submitted the request and the board recommended a full year exemption for the 1996 assessment year. The property is used for parking. The Department assigned Docket No. 96-50-60 to the application. (Dept. Grp. Ex. No. 2)

3. On May 19, 1997, the Department received a property tax exemption application from the LaSalle County Board of Review for Permanent Parcel Index No. 27-24-100-021. The applicant had submitted the request and the board recommended a full year exemption for the 1996 assessment year. The parcel contains a one-story 1,500 square foot building. The Department assigned Docket No. 96-50-61 to the application. (Dept. Grp. Ex. No. 3)

4. On May 19, 1997, the Department received a property tax exemption application from the LaSalle County Board of Review for Permanent Parcel Index No. 27-24-100-023. The applicant had submitted the request and the board recommended a full year

exemption for the 1996 assessment year. The property is used for parking. The Department assigned Docket No. 96-50-62 to the application. (Dept. Grp. Ex. No. 4)

5. On September 18, 1997, the Department denied the requested exemption applications finding that the properties were not in exempt ownership and use. (Dept. Grp. Ex. No. 5)

6. The applicant timely protested the denial of the exemptions and requested a hearing in the matter. (Dept. Ex. No. 6)

7. The hearing held at the Department's offices in Springfield, Illinois, on February 6, 1998, was pursuant to that request. (Dept. Ex. No. 7)

8. The applicant acquired the subject parcels by a quit claim deed dated December 30, 1995. (Dept. Ex. No. 2 pp. 8-9)

9. The applicant was incorporated in the state of Illinois under the provisions of "An Act Concerning Corporations", the general not-for-profit corporation act of that time, on September 16, 1942, "to protect property in the Village of Grand Ridge and in the rural areas surrounding said village against destruction by fire." (Dept. Ex. No. 2 pp. 12-13; Applicant's Ex. No. 1)

10. The applicant is exempt from the payment of federal income tax pursuant to a 501(c)(4) designation by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 12, 14-25, 31)

11. Located on Permanent Parcel Index No. 27-24-100-021 is a 1,500 square foot building that contains a kitchen, furnace room, two storage areas, restrooms, a closet and coat rack, and a large open area. (Dept. Ex. No. 2 pp. 26-29)

12. The building is known as the Grand Ridge Community Center and is available for rent with an agreement with the applicant. The rental agreement in the first paragraph states: "Rental and security deposit must be paid in advance before we consider the date held for you. FIRST COME (WITH MONEY) FIRST SERVE. Cancellations with more than 30 days notice will receive a full refund. Less than 30 days notice rental will be forfeited. Deposit will be returned." (Dept. Ex. No. 2 p. 30)

13. During 1996, various groups rented the community center, including the Starved Rock Kennel Club for 109 dates reserved at \$40.00 for total rental of \$4,630.00; the Walter Seed & Fertilizers, Inc.; Grand Ridge Youth Baseball; Grand Ridge PTO; LaSalle County Farm Supply; and Boot Kickers, to name a few. (Applicant's Ex. No. 3)

14. The fee for the rental of the building during weekdays is \$75.00. On Friday and Saturday it is \$125.00. Applicant requires a security deposit of \$25.00 for weekdays and \$50.00 for weekends from people that are unknown to the applicant. (Tr. p. 23)

15. From January 1, 1996, through December 1, 1996, the applicant realized total rental income of \$8,785.65 for the community center. (Dept. Ex. No. 2 pp. 32-33)

16. The adjacent parking lots are used in conjunction with the activities conducted in the community center. The parking lots are also used as the site for regular and special drills and training sessions of the fire department. There is no charge for parking in the lots. (Dept. Ex. No. 2 p. 10)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. One of the provisions at issue is found at 35 ILCS 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to

profit:

(a) institutions of public charity;. . .

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code. . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services . . . .

The exemption applies to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old Peoples Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home at 157.

The purpose clause of the articles of incorporation of the applicant state that the applicant is organized for the purposes of fighting fires. The Illinois Supreme Court has stated that in an action by a corporation to have its real estate declared exempt from taxation under the charitable exemption, the certificate of incorporation was the controlling evidence of the purpose for which the corporation was created. Oak Park Club v. Lindheimer, 369 Ill. 462 (1938)

The statutory exemption for fire protection purposes is found at 35 **ILCS** 200/15-70 and states:

All property used exclusively for fire protection purposes and belonging to any city, village, or incorporated town is exempt.

All property of a corporation or an association which maintains a fire patrol and salvage corps for the public benefit is exempt if the property is:

- (a) used exclusively for providing suitable rooms, housing and storage facilities for fire and rescue equipment, and
- (b) necessary for the accommodation of a fire patrol and salvage corps, or otherwise used exclusively for the purpose of the fire patrol and salvage corps, and
- (c) used to provide a service that is rendered indiscriminately and without charge to the public, . . . .

Clearly, the subject property is not being used exclusively for fire protection purposes. I therefore find that this section of the statutes is not relevant to the issues before me. The relevant portion of the statutes is the section that grants an exemption to charitable organizations that use property for charitable purposes as cited above.

The applicant testified that the applicant had never denied anyone the opportunity to use the community center if an entity were unable to afford to pay the rental fees. I find that statement is self-serving and unsupported by anything that the applicant has supplied.

In addition, the applicant has been granted a 501(c)(4) designation by the Internal Revenue Service, rather than the 501(c)(3) designation required by the statute.

I find that the applicant has failed to establish that they satisfy criteria 2, 3, 4 and 5 of the above guidelines of Methodist Old Peoples Home. I am not sure that they satisfy number 1. I also find that the applicant has not satisfied the statutory provisions that they be a 501(c)(3)

organization nor do they have a waiver of fees provision in the bylaws or articles of incorporation. Although the applicant testified that fees would be waived if necessary, there was no submission to substantiate that. In fact, the testimony was that fees were not waived in 1996 because no one requested a waiver. I therefore find that the applicant is not a charitable organization and that the use of the subject building is not charitable.

The applicant, in its brief, relies on authorities that can be distinguished from the facts and statutes at issue. In particular the applicant cites In re Guilford Hope Grange No. 6, 52 Ill.App.3d 718 (2<sup>nd</sup> Dist. 1977) which involved a grange organization concerned with farmers, farm problems, and farm life. The statutory provision at issue in that case dealt with the exemption for agricultural societies currently found at 35 ILCS 200/15-85. Not only is this a different exemption than the one at issue, the court specifically stated in the case that the applicant grange did not need to be a charitable organization as the statutory provision at issue therein did not contain the word charitable. I therefore find that the applicant's reliance on Guilford Hope Grange No. 6 is not appropriate.

I also find that the applicant's reliance on People v. YMCA of Chicago, 365 Ill. 118 (1937) is similarly misplaced. The YMCA was chartered by a special act of the general assembly, approved February 22, 1861, as a charitable organization. The act was amended in 1867 to provide in part that the association might purchase, hold, enjoy, and convey certain properties in Chicago "which shall be forever exempt from taxation". *Id.* at 119. The applicant herein does not have a charter exemption from the general assembly that exempts its properties from taxation, nor is it a charitable organization. I therefore find that People v. YMCA of Chicago is not controlling or persuasive.

The third case that the applicant cites in its brief is Resurrection Lutheran Church v. The Department of Revenue, 212 Ill.App.3d 964 (5<sup>th</sup> Dist. 1991). Resurrection Lutheran Church involved an exempt Lutheran church that leased property to a charitable organization for rent that was far below market value. The charitable organization used the property for charitable purposes. The court found that the church qualified for an exemption. The issue herein is not a

lease between two entities that qualify for an exemption. I therefore find that the holding in Resurrection Lutheran Church is not applicable to the facts stated in this case.

In order for a parking area to be exempt from property taxation it must not be leased or used for profit and its use must be in conjunction with another exemption recognized under the property tax statutes. The relevant statutory provision is found at 35 **ILCS** 200/15-125 and states in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

Because I have previously found that the applicant is not a charitable organization and does not use the adjacent building for charitable purposes, it would not be legally correct to grant an exemption for the parking areas at issue. I find that the two parking areas at issue are not entitled to a property tax exemption for the 1996 assessment year.

It is therefore recommended that LaSalle County Parcel Index Nos. 27-24-100-021, 27-24-100-022, and 27-24-100-023 remain on the tax rolls for 1996 and be assessed to the Grand Ridge Volunteer Department, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
October 30, 1998